

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Habitat For Humanity - SHIP Remedial Developer Agreement

DEPARTMENT: Community Services

DIVISION: Community Assistance

AUTHORIZED BY: Michele Saunders

CONTACT: Pamela Martin

EXT: 2302

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute the agreement with Habitat For Humanity under the SHIP Program Remedial Developer Agreement.

District 5 Brenda Carey

Ricardo Soto-Lopez

BACKGROUND:

On November 13, 2007, the Board of County Commissioners executed a SHIP Program Development Agreement with Habitat for Humanity to develop five (5) single family units for extremely low and very low income households on Pear Avenue in the Goldsboro area of Sanford, Florida. Two (2) of the units were required to be sold to and occupied by extremely low income households (with incomes not to exceed 30% of the area median income), and the remaining three (3) were reserved for very low income households (with incomes not exceeding 50% of the area median income). The units were completed by June 30, 2008 and all units were occupied by that date.

An internal monitoring by Community Assistance staff discovered that one (1) of the very low income set-aside units was sold to a low income household (with an income up to 80% of the area median income). Negotiations with Habitat's Board and County staff resulted in a proposed agreement to require the development of one (1) additional unit by Habitat to be sold to a very low income household whose income does not exceed 50% of the area median income. The County will provide no additional funding or consideration in return.

STAFF RECOMMENDATION:

Staff recommends that the Board approve and authorize the Chairman to execute the agreement with Habitat For Humanity under the SHIP Program Remedial Developer Agreement.

ATTACHMENTS:

1. Agreement

Additionally Reviewed By:



County Attorney Review (Arnold Schneider)

SEMINOLE COUNTY/HABITAT FOR HUMANITY IN SEMINOLE COUNTY, INC.
SHIP PROGRAM REMEDIAL DEVELOPER AGREEMENT

THIS AGREEMENT is made and entered into this 14 day of October, 2009, by and between SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida, hereinafter referred to as the "COUNTY", and HABITAT FOR HUMANITY IN SEMINOLE COUNTY, FLORIDA, INC., a Florida not for profit corporation, whose address is 1548 Seminola Blvd., Suite 141, Casselberry, Florida 32707, hereinafter referred to as "HABITAT".

W I T N E S S E T H:

WHEREAS, COUNTY has adopted the Seminole County Local Housing Assistance Plan ("LHAP") and participates in the Florida SHIP Program to make affordable housing available to citizens of Seminole County, Florida, who are of low income or very low income; and

WHEREAS, HABITAT is a corporation duly authorized to conduct business in the State of Florida, and is engaged in the acquisition, construction, rehabilitation and sale of affordable housing to low income and very low income households; and


WHEREAS, COUNTY and HABITAT heretofore entered into that certain Seminole County/Habitat For Humanity In Seminole County, Inc. SHIP Program Developer Agreement Program Year 2005-2006 dated November 18, 2007 (the "Prior Agreement") wherein HABITAT agreed to construct five (5) owner occupied, single family homes for Very Low Income households using SHIP funds provided by COUNTY; and

WHEREAS, HABITAT mistakenly resold one of the units to a person who, at the time of purchase, did not qualify as Very Low Income in

violation of the Prior Agreement and the recorded Restrictive Use Covenant for the subject Property; and

WHEREAS, Section 4 of the Prior Agreement expressly provided that Section 22(i) of said instrument, giving COUNTY continuing rights to enforce the Restrictive Use Covenant, would survive the expiration date of the Prior Agreement as a whole; and

WHEREAS, the Parties hereto are desirous of reaching an amicable solution to cure HABITAT's default under the Prior Agreement which would otherwise, in conjunction with the applicable Restrictive Use Covenant, give rise to COUNTY's right to recapture the SHIP funds used in the nonconforming property,

NOW, THEREFORE, in consideration of the premises and mutual covenants, promises, and representations contained herein and other good and valuable consideration,  the receipt and sufficiency of which is hereby acknowledged, COUNTY and HABITAT agree as follows:

SECTION 1. RECITALS. The above recitals are true and form a material part of the Agreement upon which the Parties have relied.

SECTION 2. DEFINITIONS.


(a) "Affordability period" shall mean the length of time for which the housing unit built pursuant to this Agreement must be owner occupied by a Very Low Income household for a term of thirty (30) years from the date a unit is purchased by the income qualified buyer(s).

(b) "CS Administrator" means the COUNTY's Community Services Director or Community Assistance Division Manager or their designee within COUNTY's Community Services Department.

(c) "County Approval" means written approval by the CS Administrator, The County Manager or the Board of County Commissioners when, as and if required.

(d) "FHFC" shall mean the Florida Housing Finance Corporation.

(e) "Parties" shall mean HABITAT and COUNTY with respect to this Agreement.

(f) "Project" shall mean the construction and sale of one (1) single family home along with all attendant development costs, infrastructure, landscaping, and appliances for occupancy only by a Very Low Income household in Seminole County. Under no circumstances shall HABITAT rent, lease, sell or convey any interest in the Project home to any person or household whose incomes exceed that of Very Low Income as defined below. The Project is more fully described in Exhibit "A" attached to this Agreement  which is hereby fully incorporated by reference.

(g) "Project Costs" shall mean the actual infrastructure costs, site development and physical construction of improvements on the subject Property as well as attendant soft costs such as architectural and engineering services, surveys, construction management, legal and accounting fees and other direct Project overhead associated therewith. Soft costs shall not exceed NINE THOUSAND SEVEN HUNDRED THIRTY AND NO/100 DOLLARS (\$9,730.00).

(h) "Property" shall mean the single family home constructed by HABITAT which is subject to the Affordability Period use restrictions on the real property parcel the legal description for which is as follows:

LOT _____, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN
PLAT BOOK _____, PAGE _____ OF THE PUBLIC RECORDS OF SEMINOLE
COUNTY, FLORIDA

Parcel Identification No. _____

(i) "Restrictive Use Covenant" shall mean that deed restriction to be executed and recorded by HABITAT with respect to the Property restricting the ownership and occupancy thereof to Very Low Income households for the duration of the Affordability Period.

(j) "SHIP" or "SHIP Program" shall mean the State Housing Initiatives Partnership Program authorized by Part VII, Chapter 420, Florida Statutes.

(k) "SHIP Regulations and Policies" shall collectively mean Chapter 67-37, Florida Administrative Code (F.A.C.), Chapter 420, Part VII, Florida Statutes, and COUNTY's approved Local Housing Assistance Plan (LHAP) as they may be amended from time to time.

(l) "Very Low Income" shall mean gross household income not to exceed fifty percent (50%) of the median family income within the Orlando Metropolitan Statistical Area during the Affordability Period.

SECTION 3. CONSIDERATION. As consideration for HABITAT's development and construction of the Project under the terms and conditions of section 4, below and upon its full performance of all other requirements of this Agreement, COUNTY shall waive its right to seek recapture of SHIP funds expended by HABITAT on the nonconforming property as well as waving any other legal or equitable remedies it may have pursuant to HABITAT's default under the Prior Agreement.

SECTION 4. STATEMENT OF WORK.

(a) HABITAT, in a manner satisfactory to COUNTY, shall perform or cause to be performed the Project, as defined above and described in Exhibit "A", Scope of Services, and within the financial requirements of Exhibit "B". HABITAT shall expend a minimum of ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00) which amount is equal to the amount of SHIP funding applied to the nonconforming property under the Prior Agreement. Said amount shall be from HABITAT's own funds or in the form of services rendered as payment-in-kind; no COUNTY money shall be applied to any Project costs. To the extent the Project costs are met by utilization of donated professional services as payments-in-kind, the value of such services shall be reliably documented by Habitat and provided to COUNTY for its use in determining that the ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00) requirement has been satisfied. Failure to document actual Project expenditures and payment-in-kind services up to an amount equal to ONE HUNDRED TWENTY THOUSAND AND NO/100 (\$120,000.00) shall be an event of default hereunder and result in COUNTY's recapture of the SHIP funds for the remaining balance not conclusively shown to have been directly remediated by HABITAT under this Agreement.

(b) HABITAT shall complete the Project and sell the completed home to a Very Low Income household within one hundred eighty (180) days from the date of this Agreement. HABITAT shall be responsible for verification of the Very Low Income eligibility of the prospective purchaser(s) and shall provide documentation thereof to COUNTY. Prospective purchaser's income eligibility shall be based upon Federal

income tax returns for the most recent tax year prior to the sale of the Property as well as verified household income data for the six (6) months immediately preceding the sale and closing.

(c) HABITAT shall execute, record and deliver to COUNTY a Restrictive Use Covenant for the Property to best assure compliance with the Affordability Period. The required form of Restrictive Use Covenant is attached as Exhibit "D" to this Agreement and is incorporated herein by reference. Failure of HABITAT to comply with this provision shall constitute an event of default, shall be grounds for unilateral termination of this Agreement and recapture of SHIP funds pursuant to Section 22(i) of the Prior Agreement.

(d) The sales price of the Property to the income qualified purchaser(s) shall not exceed NINETY-EIGHT THOUSAND SIX HUNDRED NINETY-SIX AND 40/100 DOLLARS (\$98,696.40), i.e., an amount equal to the pricing constraints imposed by the Prior Agreement so that the SHIP subsidy is fully preserved and applied to the Property being improved under this Agreement.

(e) In the event HABITAT provides purchase money, first mortgage financing to the purchasing household under this Agreement, which become the subject of imminent foreclosure proceedings, HABITAT shall give written notice of same to the CS Administrator prior to the filing of the foreclosure action and COUNTY shall have the right of first refusal to purchase the home(s) at a price sufficient to satisfy the amount of outstanding principal, interest and taxes on the home. COUNTY shall have thirty (30) days to exercise such right before the suit is filed. If a foreclosure action is later initiated in Circuit or County

Court, COUNTY shall still have the right of first refusal to purchase the home for the amount of the outstanding principal, accrued interest, taxes and a reasonable attorney's fee prior to HABITAT's obtaining a final judgment of foreclosure.

SECTION 5. TERM. The termination date of this Agreement shall be one hundred eighty (180) days from the dated date hereof unless otherwise extended by formal amendment. HABITAT shall complete all Project requirements on or before said date. The foregoing notwithstanding, Sections 9, 10, 11 and 17 of this Agreement shall remain effective for their purposes beyond the termination date.

SECTION 6. REPORTING REQUIREMENTS.

(a) In addition to the documentation required by Section 5(e) for payment purposes, HABITAT shall submit the following financial documentation to COUNTY:



(1) At or prior to the time of commencement of Project construction, a construction timetable chart and draw schedule.

(2) A completed monthly report in the form of attached Exhibit "B" on or before the fifteenth (15th) day of each month during the term of this Agreement which shall include a percentage of completion of the unit;

(3) HABITAT shall provide an End of Project Report in the form of attached Exhibit "C" on or before the termination date of this Agreement; and

(4) A final cumulative statement of all costs of materials and services expended on the Project. This shall be for the purpose of documenting to COUNTY that the required ONE HUNDRED TWENTY THOUSAND AND

NO/100 DOLLARS (\$120,000.00) shall have been applied by HABITAT to remediate the misapplied SHIP subsidy under the Prior Agreement.

(b) Failure by HABITAT to submit any required report as required by this Section shall be a default hereunder with the attendant consequences including particularly, recapture of the SHIP funds.

(c) COUNTY, FHFC, and the general public shall have access to and be provided copies of any and all of HABITAT's records pertaining to activities depicted in this Agreement.

SECTION 7. COMPLIANCE WITH LOCAL AND STATE LAWS. During the execution and implementation of this Agreement, HABITAT shall comply with all applicable State and local laws, regulations, ordinances, and policies including, but not limited to, the following:

(a) Chapter 112, Florida Statutes, including particularly Part III thereof entitled "Code of Ethics For Public Officers and Employees".

(b) COUNTY's Local Housing Assistance Plan as approved by the FHFC, as it may be amended from time to time during the term of this Agreement.

(c) All written procedures and policies issued by COUNTY regarding implementation of COUNTY's SHIP Program.

(d) Chapter 67-37, Florida Administrative Code.

(e) Chapter 420, Florida Statutes.

(f) Section 216.347, Florida Statutes (prohibiting use of monies received via this Agreement for lobbying the State legislature, the judicial branch of State government, or a State agency).

(g) Chapter 119, Florida Statutes, dealing with public records.

(h) Section 220.115, Seminole County Code (prohibiting the illegal use of public monies for unethical purposes involving COUNTY personnel). Violations of said Code provision shall be grounds for unilateral termination of this Agreement by COUNTY.


SECTION 8. MANAGEMENT ASSISTANCE. The CS Administrator or their designee shall be reasonably available to HABITAT to provide guidance on any applicable SHIP Program requirements; provided, however, that this provision shall not be deemed to relieve HABITAT of any duties or obligations set forth in this Agreement.

SECTION 9. MAINTENANCE OF RECORDS.

(a) HABITAT shall, at a minimum, maintain such records, accounts, and property and personnel records as deemed necessary by State and local laws, regulations, or ordinances or as are otherwise typical in sound business practices to assure proper accounting of all project funds and compliance with this Agreement.

(b) All records and contracts, of whatsoever type or nature, required by this Agreement shall be available for audit, inspection and copying at any time during normal business hours and as often as the CS Administrator, COUNTY, FHFC, or other Federal or State agency may deem necessary. HABITAT shall retain all records and supporting documentation applicable to this Agreement for a minimum of five (5) years after resolution of the final audit and in accordance with Florida law. If any litigation or claim is commenced prior to expiration of the five (5) years and extends beyond such time, the records shall be maintained until resolution of the litigation or claim and any person duly

authorized by COUNTY shall have full access to and the right to examine the records during such time.


SECTION 10. LIABILITY. COUNTY shall not be liable to any person, firm, entity, or corporation who contracts with or who provides goods or services to HABITAT in connection with the services to be performed hereunder whether for compensation or provided by donation or for debts or claims accruing to such parties against HABITAT. This Agreement shall not create a contractual relationship either express or implied between COUNTY and any other person, firm, or corporation supplying any work, labor, services, goods, or materials to HABITAT as a result of services to COUNTY hereunder. Section 768.28, Florida Statutes, shall be deemed as controlling with respect to any actions in tort naming COUNTY as a defendant and nothing in this Agreement or in this Section shall be construed as constituting a  of the limitations on damages conferred by said statute.

SECTION 11. INDEMNIFICATION.

(a) HABITAT shall defend, hold harmless, and indemnify COUNTY, its officers, boards, employees, and agents from and against any and all liability, loss, claims, damages, costs, attorney's fees, and expenses of whatsoever kind, type, or nature which COUNTY may sustain, suffer, or incur or be required to pay by reason of the loss of the value of any goods, services or monies paid or donated to HABITAT or whomsoever resulting out of fraud, defalcation, dishonesty, or failure of HABITAT to comply with applicable laws, rules, or regulations; or by reason or as a result of any act or omission of HABITAT in the performance of this Agreement or any part thereof; or by reason of a judgment over and above

the limits provided by the insurance required hereunder; or by any defect in the construction of the Project or in the title to the affected Property; or by failure to pay vendors resulting from financial shortfalls caused by HABITAT or as may otherwise result in any way or instance whatsoever.

(b) In the event that any action, suit, or proceeding is brought against COUNTY upon any alleged liability arising out of this Agreement, or any other matter relating to this Agreement, COUNTY shall provide notice in writing thereof to HABITAT by certified mail, return receipt requested, addressed to HABITAT at its address herein provided. Upon receiving notice, HABITAT, at its own expense, shall diligently defend against the action, suit, or proceeding and take all action necessary or proper therein to prevent the obtaining of a judgment against COUNTY.


(c) Nothing herein shall  prevent COUNTY from retaining or using its own counsel if it concludes that such is essential to maintain its defense or if HABITAT's counsel is unable to represent COUNTY's interests due to ethical conflicts. In such circumstances, HABITAT shall continue to absorb those costs at its own expense.

SECTION 12. INSURANCE.

(a) General. HABITAT shall, at its own expense, procure the insurance required under this Section.

(1) HABITAT shall furnish COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Workers' Compensation/Employer's Liability and Commercial General Liability). COUNTY and its officials, officers, and employees shall be named

additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by HABITAT, HABITAT shall provide COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with this specific Agreement and that the insurance is in full compliance with the requirements of the Agreement. In lieu of the statement on the Certificate, HABITAT shall, at the option of COUNTY, submit a sworn, notarized statement from an authorized representative of the insurer that  the Certificate is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement.


(3) In addition to providing the Certificate of Insurance, if required by COUNTY, HABITAT shall, within thirty (30) days after receipt of a written request, provide COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by COUNTY nor failure to disapprove the insurance furnished by HABITAT shall relieve HABITAT of its full responsibility for performance of any obligation including its indemnification of COUNTY under this Agreement.

(b) Insurance Company Requirements. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies other than Workers' Compensation must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 624.4621, Florida Statutes.

(2) In addition, such companies other than those authorized by Section 624.4621, Florida Statutes, shall have and maintain a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If, during the  period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (i) lose its Certificate of Authority, (ii) no longer comply with Section 624.4621, Florida Statutes, or (iii) fail to maintain the requisite Best's Rating and Financial Size Category, HABITAT shall, as soon as HABITAT has knowledge of any such circumstance, immediately notify COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as HABITAT has replaced the unacceptable insurer with an insurer acceptable to COUNTY, HABITAT shall be deemed to be in default of this Agreement.

(c) Specifications. Without limiting any of the other obligations or liability of HABITAT, HABITAT shall, at its sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this Section. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by HABITAT and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.

(1) Workers' Compensation/Employer's Liability.

(A) HABITAT's insurance shall cover HABITAT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. HABITAT will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both HABITAT and its subcontractors are outlined in subsection (C) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable Federal or State law.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida

Workers' Compensation Act or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

\$1,000,000.00	(Each Accident)
\$1,000,000.00	(Disease-Policy Limit)
\$1,000,000.00	(Disease-Each Employee)

(2) Commercial General Liability.

(A) HABITAT's insurance shall cover HABITAT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by HABITAT (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

General Aggregate	\$2,000,000.00 ¹
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00
Automobile/Other Motor Vehicle	\$1,000,000.00 ²

¹ May also be structured as \$1,000,000.00 in coordination with a \$1,000,000.00 umbrella policy.

² Each occurrence.

(3) Builder's All Risk Insurance. If this Contract includes construction of or additions to above ground buildings or structures, Builder's Risk coverage must be provided as follows:

(A) Builder's All Risk Coverage. Coverage is to be no more restrictive than that afforded by the latest edition of Insurance Services Office Forms CP 00 20 and CP 10 30.

(B) Amount of Insurance. The amount of coverage shall be equal to one hundred percent (100%) of the completed value of such additions, buildings or structures.

(C) Maximum Deductible: FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) per claim.

(D) Waiver of Occupancy Clause or Warranty. The policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the buildings, additions, or structures in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that Builder's Risk coverage will continue to apply until final acceptance of the buildings, additions, or structures by OWNER.

(E) Exclusions. Exclusions for design errors or defects, theft, earth movement, and rainwater shall be removed.

(F) Flood Insurance. If buildings or structures are located within a special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structures, or the maximum amount of flood insurance coverage available under the National Flood Program.


(d) Coverage. The insurance provided by HABITAT pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by COUNTY or COUNTY'S officials, officers, or

employees shall be excess of and not contributing to the insurance provided by or on behalf of HABITAT.


(e) Occurrence Basis. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis.

(f) Obligations. Compliance with the foregoing insurance requirements shall not relieve HABITAT, its employees, or its agents of liability from any obligation under a Section or any other portions of this Agreement.

SECTION 13. PERFORMANCE BONDS AND USE OF OUTSIDE CONTRACTORS.

(a) If HABITAT hires professional contractors, subcontractors or vendors providing labor, goods, or services in connection with the Project, HABITAT shall remain fully responsible for the adequacy of goods and services provided by  said persons. All paid professional contractors, subcontractors, or vendors retained by HABITAT for Project goods and services shall be pre-approved by COUNTY before HABITAT enters into any contract with such outside parties. HABITAT shall provide COUNTY a copy of the proposed contract(s) at the time approval is sought. COUNTY shall have five (5) working days from the date of receipt of the request and the copy of the proposed contract(s) to approve or disapprove the selected person(s). Approval or disapproval shall be in writing and signed by the CS Administrator. COUNTY's failure to timely provide written notice shall be deemed as an approval, and HABITAT shall then be free to enter into the contract without further delay. HABITAT shall be fully responsible for the adequacy of services performed and materials provided by said

professional contractors, subcontractors or vendors as well as for prompt payment thereof and for prompt removal of any liens that may be filed by such persons. Failure to present marketable title free and clear of any such liens shall be deemed an event of default under this Agreement and shall be grounds for COUNTY to initiate recapture of the SHIP funds provided under the Prior Agreement. All professional contractors, subcontractors, or vendors shall be properly licensed and subject to the same insurance requirements as HABITAT under this Agreement. No COUNTY approvals shall be required for contractors, subcontractors, or vendors providing donated labor, goods, and services.

(b) Professional contractors, subcontractors or vendors providing goods and services to HABITAT other than on a donated basis shall be required to post performance bonds  at least equal to the dollar value of the contracted goods and services for the Project. HABITAT shall furnish COUNTY with a copy of the performance bond(s) in the full amount of the contracted price. The bond shall be issued by a reliable surety company in a form acceptable to COUNTY and shall be made payable to COUNTY. Said bond(s) shall ensure that the time of delivery of goods and services is satisfactorily met, that the work performed and equipment or materials supplied meet all specifications, and that all warranties shall be honored. If at any time after the execution of this Agreement, COUNTY shall deem the surety or sureties to be unsatisfactory, or if for any reason the performance bond ceases to be adequate to cover the performance and payments of the work, HABITAT shall, at it's own expense if necessary and within fifteen (15) days

after receipt of Notice from COUNTY to do so, cause its professional contractors, subcontractors, or vendors furnish additional bond(s) in such form and amounts and with such sureties as shall be satisfactory to COUNTY.

SECTION 14. ASSIGNMENT AND SUBCONTRACTS. Neither Party shall assign this Agreement nor any interest herein, without the prior written consent of the other. HABITAT may subcontract certain necessary services as set forth in Exhibit "A" upon the written approval of the subcontract by COUNTY.

SECTION 15. HEADINGS. All articles and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation thereof.

SECTION 16. NOTICE. Whenever either Party desires to give notice unto the other, notice shall be sent to:

For COUNTY:

Community Assistance Division Manager
Seminole County Community Services Department
534 W. Lake Mary Blvd.
Sanford, FL 32773

For HABITAT:

Executive Director
Habitat For Humanity In Seminole County Florida, Inc.
1548 Seminola Blvd., Suite 141
Casselberry, FL 32707-3648

Either of the Parties may change, by written notice as provided herein, the address or person for receipt of notice. Mere change of the person(s) to whom notices are sent may be done by a written letter sent via first class U.S. Mail without need for formal amendment to this

Agreement. Any such change of the person(s) shall be attached to both Parties' copies of this Agreement.

SECTION 17. TERMINATION, BREACH, AND REMEDIES.

(a) HABITAT may terminate this Agreement for good cause upon thirty (30) days prior written notice of intent to terminate delivered to COUNTY by certified mail, return receipt requested, or by hand delivery with proof of delivery.

(b) COUNTY may terminate this Agreement with or without good cause immediately upon written notice sent to HABITAT.

(c) In the event of termination, HABITAT shall:

(1) Prepare all necessary reports and documents required under the terms of this Agreement up to the date of termination, including a final report and accounting of the type otherwise due at the end of the Project without compensation for services rendered in completing said reports beyond the termination date.

(2) Take any other reasonable actions related to the termination of this Agreement as directed in writing by COUNTY.

(3) Immediately return any unexpended SHIP funds to COUNTY.

(4) Decease from making any further commitments for Project goods or services.

(d) The following actions shall constitute a breach of this Agreement by HABITAT:

(1) Unauthorized or improper use of SHIP funds as may have been provided under the Prior Agreement or any other agreement with the COUNTY.

(2) Failure to comply with any requirements of this Agreement.

(3) Unauthorized changes in the scope, components, or costs of the Project.

(4) Submission of negligently or fraudulently prepared invoices or reports to COUNTY.

(f) Waiver by COUNTY of breach of one provision of this Agreement shall not be deemed to be a waiver of any other subsequent breach of the same or another provision of this Agreement and shall not be construed to be a modification of the terms of this Agreement.

(g) In the event HABITAT breaches this Agreement, COUNTY shall have the immediate right to terminate this Agreement. COUNTY may also send a written demand for refund of all SHIP monies previously paid to HABITAT. If said demand is not satisfied, COUNTY may record said written demand in the official records of Seminole County and it shall constitute a lien upon all real and personal property of HABITAT.

(h) COUNTY reserves all rights afforded by law and equity to enforce the terms of this Agreement and the surviving provisions of the Prior Agreement to recover damages in the event of a breach by HABITAT.

(i) COUNTY shall retain the right to enforce the Restrictive Use Covenants past the term of this Agreement, or the termination thereof, for the duration of the Affordability Period.

SECTION 18. DISPUTE RESOLUTION.

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY dispute resolution procedures prior to filing suit or

otherwise pursuing legal remedies. COUNTY dispute resolution procedures for contract dispute resolution are set forth in Section 8.1539, "Contract Claims", Seminole County Administrative Code.

(b) HABITAT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in COUNTY dispute resolution procedures set forth in subsection (a) above of which HABITAT had knowledge and failed to present during COUNTY dispute resolution procedures.

(c) In the event that COUNTY dispute resolution procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

(d) This Agreement shall be construed in accordance with the laws of the State of Florida. The Parties hereby consent to venue in the Circuit Court in and for Seminole County, Florida, as to State actions and the United States District Court for the Middle District of Florida, Orlando Division, as to Federal actions.

SECTION 19. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue to or for the benefit of any other third party.

SECTION 20. MODIFICATIONS, AMENDMENTS, OR ALTERATIONS. No modification, amendment, or alteration in the terms or conditions

contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 21. EQUAL OPPORTUNITY EMPLOYMENT. HABITAT agrees that it will not discriminate against any employee or applicant for employment for work involving matters under this Agreement because of race, color, religion, sex, age, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 22. ENTIRE AGREEMENT. This instrument constitutes the entire Agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties, if any, relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein or changes in the Project's scope or cost shall only be made by the Parties in writing by formal amendment hereto.

SECTION 23. SEVERABILITY. If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void and deemed severable from the remaining covenants or provisions of this Agreement and in no way affect the validity of the remaining covenants or provisions of this Agreement.

SECTION 24. MISCELLANEOUS.

(a) The Parties represent to each other that each, respectively, has full right, power, and authority to execute this Agreement.

(b) All sections and descriptive headings in this Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation hereof.

(c) The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties, but this provision shall in no way alter the restrictions hereon in connection with assignment.

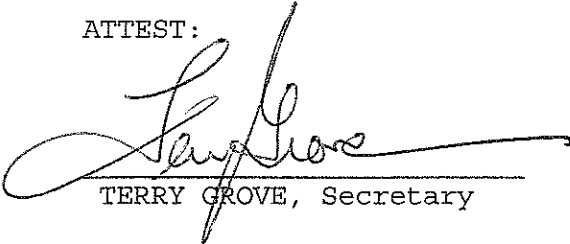
(d) It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the Parties, or as constituting HABITAT, including its officers, employees, and agents the agent, representative, or employee of COUNTY for any purpose or in any manner whatsoever. HABITAT is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

SECTION 25. EFFECTIVE DATE. This Agreement shall become effective immediately upon its execution by both Parties.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement
to be executed:

ATTEST:


TERRY GROVE, Secretary

[CORPORATE SEAL]

HABITAT FOR HUMANITY IN
SEMINOLE COUNTY, INC.

By: 
MICHAEL TOWERS, President

Date: 10. 14 09

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
BOB DALLARI, Chairman

Date: _____

For the use and reliance
of Seminole County only.

Approved as to form and
legal sufficiency.

As authorized for execution
by the Board of County Commissioners
at their _____, 20____
regular meeting.

County Attorney

Attachments:

- Exhibit A- General Scope of Services
(including Attachment 1 "Project Elevations and Design")
- Exhibit B- Monthly Report Form
- Exhibit C- End of Project Report Form
- Exhibit D- Form of Restrictive Use Covenant

Revised 10-7-09 AWS

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EXHIBIT A

GENERAL SCOPE OF SERVICES
SEMINOLE COUNTY/ HABITAT FOR HUMANITY IN SEMINOLE COUNTY, INC.
REMEDIAL SHIP FUNDED HOUSING PROJECT FOR PROGRAM YEAR 2005-2006

All capitalized words and terms herein shall have the same meanings ascribed to them in the attached Agreement.

HABITAT shall provide the following Project services according to the conditions specified herein and in the Agreement:

1. HABITAT shall construct one (1) single family home having 2, 3 or 4 bedrooms along with all attendant development costs, infrastructure, landscaping and appliances for occupancy by a Very Low Income household in Seminole County. The housing unit shall be according to the plans, specifications and drawings prepared by or on behalf of HABITAT and as approved by COUNTY. Under no circumstances shall the unit be sold by HABITAT to a household or persons whose incomes exceed the definition of Very Low Income. HABITAT shall be responsible for verification of the Very Low Income eligibility of the prospective purchaser(s) and shall provide documentation thereof to COUNTY. At the minimum, income eligibility verification documentation shall consist of reliable statements of household income for at least the six (6) month period immediately preceding purchase of the Project and the prospective purchaser's federal income tax return for the most recent tax year.

2. HABITAT shall be solely responsible for expending not less than ONE HUNDRED TWENTY THOUSAND AND NO/100 (\$120,000.00) of its own funds or donated payment in kind goods and services on the Project in order to remediate the misapplication of a like amount of COUNTY's SHIP

funds supplied to HABITAT pursuant to the Prior Agreement. To the extent the Project costs are met by utilization of donated professional services as payments-in-kind, the value of such goods and services shall be reliably documented by Habitat and provided to COUNTY for its use in determining that the ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00) requirement has been satisfied. Failure to document the application of an amount at least equal to ONE HUNDRED TWENTY THOUSAND AND NO/100 (\$120,000.00) shall result in COUNTY's recapture of the SHIP funds for the remaining balance not conclusively shown to have been directly remediated by HABITAT.

3. HABITAT shall construct the home on the parcel legally described as follows:

LOT 14W17.77 Ft. of Lot 2 Blk 4 Pine Level, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 36 OF THE PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA

Parcel Identification No. 35-19-30-513-0400-0010

4. The sales price of the completed home to an income qualified purchaser(s) shall not exceed NINETY-EIGHT THOUSAND SIX HUNDRED NINEY-SIX AND 40/100 DOLLARS (\$98,696.40), i.e., an amount equal to ONE HUNDRED TWENTY PERCENT (120%) of the budgeted construction costs of EIGHTY-TWO THOUSAND TWO HUNDRED FORTY-SEVEN AND NO/100 DOLLARS (\$82,247.00) per unit as specified in Exhibit "B" to the Prior Agreement.

5. HABITAT shall execute and record a Restrictive Use Covenant in the form attached as Exhibit "D" to the Agreement at or prior to the sale of each completed unit to income qualified purchasers. Said Restrictive Use Covenant shall provide that the completed housing unit

shall only be used for residential purposes by Very Low Income households for the duration of the thirty (30) year Affordability Period under the terms and conditions stated in the instrument.

6. In the event HABITAT provides purchase money, first mortgage financing to households buying units financed under the Agreement which become the subject of foreclosure proceedings, COUNTY shall have the right of first refusal to purchase the home pursuant to Section 4(e) of the Agreement.



EXHIBIT B

DEVELOPER'S MONTHLY REPORT

Status Report for Month of _____

DEVELOPER: **HABITAT FOR HUMANITY IN SEMINOLE COUNTY, INC.**

Contact Person(s): _____

Telephone: _____

NARRATIVE DESCRIPTION OF ACTIVITY STATUS/MILESTONES:

III. BUDGET STATUS

ACTIVITY	BUDGET	EXPENSES PAID THIS MONTH	TOTAL EXPENSES PAID TO DATE	OUTSTANDING OBLIGATIONS	BUDGET BALANCE	EXPECTED COMPLETION DATE
Construction of one (1) single family home for occupancy by a Very Low Income household						
TOTAL	\$120,000					

Any other special accomplishments:

Number of units underway and description of compliance and percentage of completion relative to SHIP payment milestones:

Signed: _____

EXHIBIT C

END OF PROJECT REPORT

DEVELOPER: HABITAT FOR HUMANITY IN SEMINOLE COUNTY, INC.

FISCAL YEAR: _____

Type of service provided: Acquisition and construction of 1, 2, 3 or 4 bedroom single family house for a Low Income household in Seminole County.

Total number of people served: _____

TOTAL NUMBER OF HOUSEHOLDS/PERSONS DIRECTLY ASSISTED IN COLUMN "A"								
No. of Household/ Persons Assisted	Very Low Income 30% AMI	Very Low Income 50% AMI	White not Hispanic Origin	Black not Hispanic Origin	American Indian/ Alaskan Native	Hispanic	Asian/ Pacific Islander	Female Headed Household
A	B	C	D	E	F	G	H	I

Any other special accomplishments: _____

Signed: _____

EXHIBIT "D"

This document was prepared by:
Arnold W. Schneider
Assistant County Attorney
County Attorney's Office
Seminole County Government
1101 East First Street
Sanford, FL 32771

Please return it to:
Community Development Office
Seminole County Government
524 W. Lake Mary Blvd.
Sanford, FL 32773

RESTRICTIVE USE COVENANT

This Restrictive Use Covenant is made by **HABITAT FOR HUMANITY IN SEMINOLE COUNTY FLORIDA, INC.**, a Florida not for profit corporation and owner of the fee simple interest in the below described real property and whose address is 1548 Seminola Blvd., Suite 141, Casselberry, Florida 32707, hereinafter referred to as "GRANTOR", in favor of **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771 (the "GRANTEE") concerning that certain parcel of real property the address, legal description, and parcel identification number for which are as follows:

1415 W. 17th St. Sanford FL 32771
Street address of affected property goes here

and legally described as:

Lot 1 & W 17.77 Ft. of Lot 2 Blk 4 Pine Level PB 6 & PG 36

Parcel Identification No.:

(hereinafter called the "Property") and;

The use of the Property shall be restricted to providing single family, owner occupied housing for Very Low Income households for a period of thirty (30) years from the recording date of this instrument in the Official Land Records of Seminole County, Florida, (the "Affordability Period").

"Affordability Period" means the length of time for which the Property herein described shall comply with the above described occupancy and use restrictions in conformance with the COUNTY'S Local Housing Assistance Plan ("LHAP") as approved by the Florida Housing Finance Corporation pursuant to Chapter 420, Part VII, Florida Statutes and Chapter 67-37, Florida Administrative Code, both governing the State Housing Initiatives Partnership program.

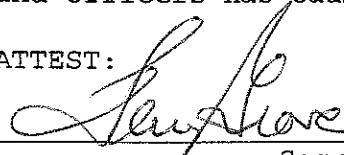
"Very Low Income" shall mean combined total household income from all sources that does not exceed fifty percent (50%) of the median household income for the Orlando Metropolitan Statistical Area during the Affordability Period.

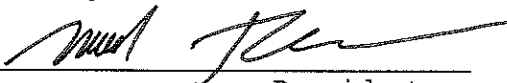
This Restrictive Use Covenant shall constitute a covenant running with the land, shall be binding upon the current GRANTOR, its successors in title, and is expressly for the benefit of GRANTOR and the GRANTEE and may be enforced by the GRANTOR or the GRANTEE in any lawful manner. This Restrictive Use Covenant may be released prior to the expiration of the Affordability Period only upon the consent of the GRANTEE as evidenced by a written instrument to that effect duly executed by the Board of County Commissioners of Seminole County, Florida and recorded in the Official Records of said jurisdiction.

IN WITNESS WHEREOF, the GRANTOR, through its undersigned directors and officers has caused this instrument to be executed:

ATTEST:

[GRANTOR]


TERRY GROVE, Secretary

By: 
MICHAEL TOWERS, President

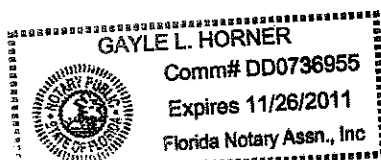
[CORPORATE SEAL]

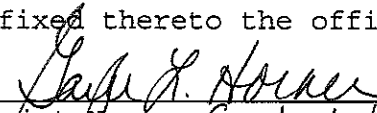
Date: 10-14-09

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

I HEREBY CERTIFY that, on this 14 day of October, 2009, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Michael Towers as President and Terry Grove, as Secretary, of Habitat for Humanity of Seminole County Florida, Inc., a Florida not for profit corporation organized under the laws of the State of Florida, who are personally known to me or who have produced N/A and

N/A respectively, as identification. They have acknowledged before me that they executed the foregoing instrument as such officers in the name and on behalf of the corporation, and that they also affixed thereto the official seal of the corporation.




Print Name: Gayle L. Horner
Notary Public in and for the County
and State Aforementioned
My commission expires: 11/26/11